

ORIGINAL

PRELIMINARY REVIEW OF APPEALS
PUBLIC MEETING BEFORE THE
HAZARDOUS WASTE MANAGEMENT COMMISSION

0714
Site: West Lake HF
ID # MBD07990932
Break: 3.0
Other: 012
11-3-83

RECEIVED

NOV 18 1983

WASTE
MANAGEMENT PROGRAM

TRANSCRIPT OF PROCEEDINGS

November 2 and 3, 1983

Reported by Georganne L. Baker
Certified Shorthand Reporter
and Registered Professional Reporter
of

Baker Reporting

REGISTERED PROFESSIONAL REPORTERS — NOTARIES PUBLIC
300 CHESTERFIELD CENTER — SUITE 190
CHESTERFIELD, MISSOURI 63017
314/532-5407

40249251



SUPERFUND RECORDS

DNR 0217

1 of the hauler, and other wastes in large volumes - this also

2 from 1943. MR. WESTER: That's right.

3 MR. GRAY: And he can proceed there through the
4 courts as he might want to.

5 MR. WESTER: That's right. We're trying to help
6 our client here in that case with any identification that
7 we can. We, I think like everyone else.

8 MR. GRAY: He happens to be the owner and dumped
9 on him he ought to do that, if he can.

10 MR. WESTER: If he can, I agree.

11 MR. CHAIRMAN: You are licensed in Missouri
12 to handle this?

13 MR. WESTER: Trade Waste Incineration, and so
14 we're acting just as a consultant to him. We're not doing
15 any of the hands-on work, ourselves.

16 MR. CHAIRMAN: I guess that concludes that.

17 MR. BROWN: Unless you have some questions of us.

18 MR. WESTER: No.

19 MR. CHAIRMAN: Westlake Landfill.

20 DR. BEDAN: Shall we go?

21 MR. CHAIRMAN: Dr. Bedan.

22 DR. BEDAN: Westlake Landfill, according to
23 Superfund notifications filed with Environmental Protection
24 Agency, St. Louis Area Industries and Solid Waste Hauling
25 Companies delivered various waste organics, pesticides, raw

1 inorganics, and other wastes in large volumes to this site
2 from 1948 until 1981.

3 These wastes would display characteristics of (10 CSR
4 25-4.010 (2), Ignitable Hazardous Waste, (10 CSR 25-4.010
5 (3), Corrosive Hazardous Waste, and/or (10 CSR 25-4.010
6 (5), Toxic Hazardous Waste.

7 MR. CHAIRMAN: Now, as I am reading your letter
8 here, it seems to me that there is no question in your
9 mind as to whether this should be listed under the law
10 as it exists. You are not raising any constitutional
11 question?

12 MR. WITTENBERG: We're not raising any con-
13 stitutional questions. I think our point is that --

14 MR. CHAIRMAN: Excuse me. Did you give your
15 name?

16 MR. WITTENBERG: I'm sorry. Yes, I did. I
17 apologize. My name is Walter Wittenberg. I'm an attorney
18 from St. Louis, and I represent Westlake. The reason we
19 filed, and I think that we would be asking you today that
20 when you consider our letter that you would set our matter
21 down for a hearing, we feel that the hearing, however,
22 should be to a degree by the hearing officer postponed
23 because we think that there are sufficient factual questions
24 here that there is a problem with this being premature.

25 That is with our designation being premature. We have

1 looked at the EPA report, and as we understand it, their
2 problem is that we, quote, may be causing some sanitary
3 problem with the water.

4 But nobody knows. We have read the reports, and we
5 find them deficient technically, and we are willing to
6 do whatever is proper, but if we read the report, there
7 is a lot of hearsay here. And that, one of the reports
8 that we understand this is based on, was a report to the
9 EPA from a company that they had been dumping things at
10 our site since 1948, when in fact, we found out they
11 weren't even in the business of dumping or hauling things
12 until 1960.

13 So, we questioned the accuracy of the reports upon
14 which this is based. We have been in contact with the
15 DNR since January, with respect to a monitoring well
16 program on our site. We have employed for a number of
17 years the firm of Reitz & Jens in St. Louis, who are
18 consulting engineers who work with the DNR with respect
19 to the operation of our landfill.

20 They have been attempting to get copies of the backup
21 for the EPA report and approval for a further monitoring
22 load program so we could determine what the facts are.
23 That's why we really filed the appeal. But we don't think
24 there is sufficient factual basis upon which to make a
25 determination at this point as to whether or not we belong

1 on the registry or don't belong on the registry, determine

2 And I guess, some of the background that we have heard
3 about the reports on which the EPA report is based, make
4 us question its accuracy.

5 MR. CHAIRMAN: Is there a question in your mind
6 as to whether any of these ignitable hazardous wastes ~~are~~
7 corrosive hazardous wastes, or toxic hazardous wastes were
8 at that time dumped in that site?

9 MR. WITTENBERG: We don't know. We have been
10 operating this site for a long time, and for me to sit in
11 front of you and to say that somebody didn't put something
12 in somebody's garbage that's been dumped there over the
13 thirty years, we don't know.

14 We have complied with all the regulations to the extent
15 there have been regulations issued over the years. That's
16 why we have employed over a long number of years Reitz &
17 Jens. Our operation has been primarily and always has
18 been a sanitary landfill for garbage, basically, and we
19 have construction fill that is, you know, wood and this
20 sort of thing.

21 But we've never held ourselves open to a hazardous
22 waste site nor willingly accepted anything like that.

23 MR. BROWN: Might I inquire from both the Staff
24 and from you, are there any special waste authorities with
25 regard to that site?

1 MR. WITTENBERG: We, you mean as to determine
2 hazardous wastes? We haven't looked at the
3 supposed MR. BROWN: No. No. I'm just saying, special
4 wastes as they were defined previous to the hazardous waste
5 law.

6 DR. BEDAN: I don't know.

7 MR. BROWN: You don't know?

8 DR. BEDAN: Offhand, I don't know. Mr. Witten-
9 berg, I don't know, either. We don't go back the whole
10 time that this was operated, this landfill. But the best
11 of my knowledge --

12 MR. BROWN: In other words, there is a change
13 of ownership, if you will, in the operation going backwards?

14 MR. WITTENBERG: No. The operation was started
15 in the '30s by co-owners. One of the co-owners bought out
16 the other in 1971. And in 1981, the surviving co-owner,
17 the one who bought out the wife's, died, and it is now
18 in an estate.

19 The whole operation is owned by a probate estate,
20 the decedent's estate. So, we go back some years with
21 the prior owner in their representation, but I can't answer
22 that question. I don't know.

23 MR. NELSON: Are you familiar with the source
24 of the information that allegedly pinpoints these types of
25 materials as going into this particular site of yours?

1 the Superfund MR. WITTENBERG: We have received a copy of this
2 EPA report, and our consultants have looked at what is
3 purported to have been some of the backup upon which some
4 of this was based.

5 And in looking at it, we can't verify or not verify
6 that they are true. All we can do is look at them with
7 a little common sense approach. When a fellow says he's
8 been doing this for thirty years and he's only been in
9 business for fifteen, that makes us question the veracity
10 of it.

11 MR. NELSON: Does that mean he has only been
12 in the business for fifteen years at his present location,
13 but for fifteen years prior to that, he's been hauling
14 stuff from the other location?

15 MR. WITTENBERG: Could be.

16 MR. NELSON: Is this a manufacturer or a trans-
17 portation company?

18 MR. WITTENBERG: These were waste haulers.

19 MR. NELSON: Waste haulers?

20 MR. WITTENBERG: S-b-a-s-e-i, or these kind of
21 people.

22 MR. NELSON: Let me ask the DNR. Dave, or Dan,
23 do we have access to the basis upon which the EPA allege
24 that these are --

25 MR. JORGENSEN: Yes, we do. We have copies of

1 the Superfund notification forms, and that's what you are
2 referencing. I would assume, where waste hauling companies
3 did file with the EPA that they did haul a particular type
4 of waste to the site in the past.

5 And we also have copies of those forms filed from a
6 specific industrial source. *I don't know what Stan was talking about here.*

7 MR. NELSON: Not only from the hauler, but also
8 from the generators, themselves?

9 MR. JORGENSEN: Yes, sir.

10 MR. NELSON: You haven't had access to that same
11 information?

12 MR. WITTENBERG: My understanding is, that we
13 have seen some, but not all of it. We are, our consultant
14 feels that he doesn't have sufficient information on which
15 we may very well when we see it and do the monitoring well
16 program, come to the conclusion that we would withdraw our
17 appeal. But we just don't know at this point.

18 One of the things we got out of reading it all was
19 that they are more concerned about the contamination of
20 ground water. And if there were these things there, they
21 were not in any position to be hazardous to anyone. That's
22 why we suggest in our letter that it properly, the more
23 proper designation, I think, would be a closed site as
24 opposed to open.

25 We can't say that there is any contamination or isn't.

1 because we don't feel that we've had enough monitoring well
2 situation. That's when we first became aware of it, this
3 was prior to the DNR notification that our people started
4 dealing with the DNR monitoring program back in June of
5 this year.

6 MR. BROWN: As far as the matter we have possibly
7 before us for hearing, it is just whether or not there is
8 hazardous waste on the site, period?

9 Obviously, beyond that, has to do with the, one of
10 the five particular categories.

11 MR. WITTENBERG: Correct.

12 MR. BROWN: Which is then a subsequent matter.

13 MR. WITTENBERG: That's correct.

14 MR. BROWN: And the resolution of that matter
15 is something that will go beyond this point, obviously.

16 MR. WITTENBERG: Yes.

17 MR. BROWN: I think we are constrained. This
18 is my initial flush on this, I think we were probably con-
19 strained as far as the DNR says that there is information,
20 which upon hearing would say, there is sufficient informa-
21 tion for listing, and then possibly the discovery process
22 before that hearing will resolve this matter so that you
23 may wish to withdraw your appeal and resolve your questions
24 to the area of I or V, and if it is in discovery discovered
25 you feel that you have a valid question on the thing, it

1 will have to go on to hearing.

2 MR. WITTENBERG: I agree. I think that is
3 exactly, we are appealing purely to protect ourselves.
4 We just don't know. We may cave in, we may say, you are
5 right, the tests show that it is there.

6 The pre-hearing conference has come to a conclusion.
7 I want to say, by the way, that I thank you very much not
8 only on behalf of Westlake, but as a citizen. I think
9 this is a great procedure to have this informal meeting
10 to do this, and I think that we worked with the DNR people
11 a long time, and I think it's a great way to do it in what
12 I would think in a non-adversarial way.

13 I think that we're after the common good.

14 MR. CHAIRMAN: Off the record, I'm going to
15 agree with that, and I'm going to have to thank Dick Brown,
16 who was setting up this procedure. I do appreciate it.

17 MR. WITTENBERG: I congratulate you, and I
18 thank you at the same time.

19 MR. BROWN: Very basically, I think we're in
20 a situation where it was obviously necessary that we had
21 to have, if you will, a pre-hearing conference to determine
22 whether there were issues that needed to be heard, and to
23 greater or lesser degree in each of the instances.

24 Why, in some instances, why, it's obviously clear a
25 hearing is going to be required. In some others, why, I

1 think that we need to, under the constraints of the particu-
2 lar statutory directive we've gotten from the Legislature,
3 we're going to have to set it and say that a hearing is
4 required, and then, if the pre-hearing procedures differ,
5 why, it may resolve the issues.

6 MR. WITTENBERG: I agree. Thank you.

7 MR. CHAIRMAN: Thank you. Well, we're going
8 fine here. Next thing that I have on the list is Bliss
9 Tank Property. Are they present? If I may, I'm going to
10 delay that until the last item, because there are other
11 people who are present here waiting.

12 In other words, I'm going to slip that down and handle
13 it last this afternoon. Is that all right with you, Dave?

14 DR. BEDAN: Fine. Slip Bliss Tank down.

15 MR. BROWN: If there is nobody present, let's
16 get the ones that are present.

17 MR. CHAIRMAN: Findett Corporation. Dr. Bedan.

18 DR. BEDAN: The Findett Corporation site, noti-
19 fication letter received August 27th, 1983. Waste at this
20 site is PCB oil and contaminated soil. Ground water and
21 sediment sampling has been required by EPA to determine
22 the extent of contamination, but analytical results are
23 not available yet.

24 MR. TEGETHOFF: We have one minor question to
25 start with. I'm not sure this is a correct description of